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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 94-179

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section NR 410.02 (5) cites 42 U.S.C. s. 7412 (g) as the authority for the department to establish a generally available control technology for hazardous air pollutant emissions from area sources. Since 42 U.S.C. s. 7412 (g) does not contain an explicit reference to the establishment of generally available control technology for these emissions, the authority for the department to establish these technologies is not apparent.

2. Form, Style and Placement in Administrative Code

a. Since the Revisor of Statutes has already corrected the spelling of “written” in s. NR 406.11 (1) (intro.), the amendment to this introduction is not necessary.

b. Existing s. NR 400.02 (29) contains a definition of “direct source.” As affected by the rule, ss. NR 410.02 (7) and 410.03 (intro.) and (1) (intro.) use the term “direct air contaminant source.” If a “direct air contaminant source” is the same as a “direct source,” then the department should consistently use “direct source.” If there is a difference between these terms, then the department should define “direct air contaminant source.”

c. Since SECTIONS 9 and 10 amend consecutive-numbered provisions in s. NR 410.03 (2), these provisions may be included in a single SECTION of the draft. [See s. 1.04 (2) (a), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section NR 410.03 (intro.) and (3) (c) reference a nonexistent section, s. NR 411.04. These provisions should be created at or after the time that s. NR 411.04 is created.

b. The rule contains a number of references to relevant provisions in the Administrative Code or statutes which are too general and potentially ambiguous. For example, s. NR 410.03 (1) (a) 2 references a major source “as defined in ch. NR 407” rather than as defined in s. NR 407.02 (17). Section NR 410.03 (2) (o) (intro.) refers to “the time interval in s. 144.392, Stats.,” but this statutory section specifies multiple time intervals in s. 144.392 (3), (6) and (8), Stats. The department should review the entire rule to ensure that references to other related statutes and rules are specific and unambiguous.